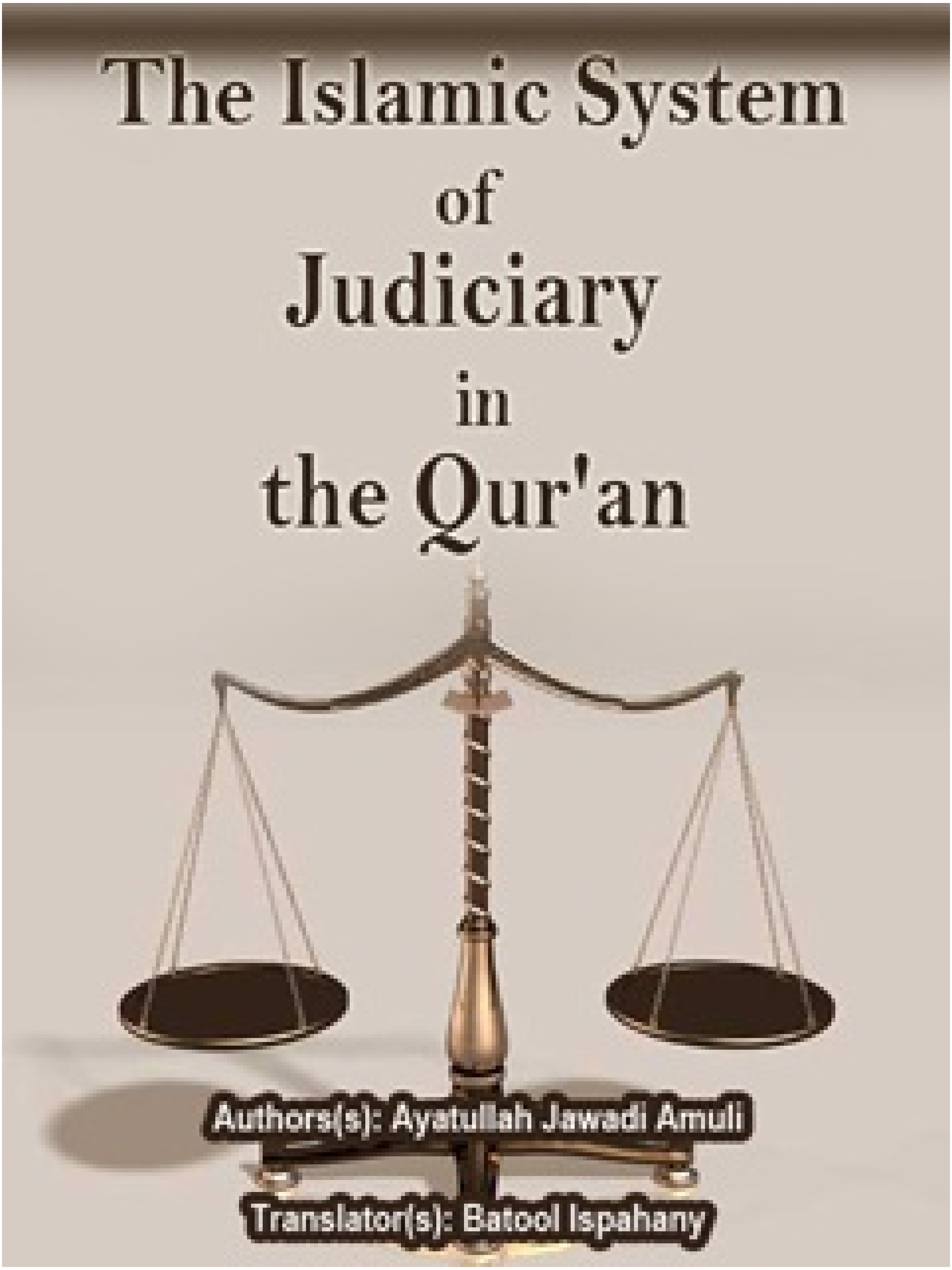

The Islamic System
of
Judiciary
in
the Qur'an
Authors(s): Ayatullah Jawadi Amuli
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Verses of the Qur'an which deal with a judiciary system, need for judiciary laws, rules for judges, and matters concerning testimony and witnesses.

The Islamic System of Judiciary in the Qur'an

point

Jawadi Amuli

Translated from the Arabic by Batool Ispahany

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The author is a leading Iranian philosopher and scholar, and it was he who led the delegation that carried Imam Khumayni's historic letter to President Gorbachev.

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There are a number of noble Qur'anic verses which deal comprehensively with the `system of the judiciary', and which we must examine closely. In the following sections, these verses will be studied and the results sought for derived from them:

1. The need for the judiciary (al-qada'), which is indispensable for the life of human society.

2. The criterion for judiciary.

3. The rules of conduct for the judge, his qualities, rights, and particular duties.

4. The duty of the litigants in observing the criteria specified by none other than revelation and in refraining from opposition to and questioning what has originated from the Source of the judiciary.

5. Matters concerning judiciary, such as testimony and the duties of the witness.

We will discuss these important issues, and study the Qur'anic view of them.

1. The Need for Judiciary

Man is a social creature. He is unable to dissociate himself completely from others and live in isolation and seclusion.

He is also unable to live in complete harmony with others, since each person has his own particular ideas, qualities, and conduct. to which his nature inclines, which .characterize him without anyone else sharing them either partly or wholly

If man is unable to live alone and remain in absolute solitariness, nor able to live in complete harmony with others, then differences will undoubtedly appear between individuals and groups. There will be strife between them and disputes will take place .about particular interests, with each one having an eye out for his own interests

If there were no general rules to which people could take recourse, and no criteria by which truth could be distinguished from falsehood, social order would be disrupted, human society would break down, and public affairs would be in disarray. The noble Qur'anic verses testify to this. As regards the first point, i.e., man's nature as a social :creature, it is indicated by the statement of God, the Exalted

O mankind, We have created you male and female, and appointed you races and" (tribes, that you may know one another". (۴۹:۱۳

If man was not social by nature and individuals were able to live by themselves, there would be no need of races and tribes, since they would not require the mutual .acquaintance (al-ta`aruf) which depends on social ties

:Regarding the second point, i.e., the inevitability of conflict, God, the Exalted, says

Had thy Lord willed, He would have made mankind one nation; but they continue in" their differences, excepting

(those on whom Thy Lord has mercy". (11:118-119

God's responsibility is to show the way; and some do swerve from it. If He willed, He" (would have guided you all together". (16:9

It is not correct to make them `one nation', because that compulsion would be inconsistent with human responsibility and would also be inconsistent with voluntary growth and development. In fact, it would be inconsistent with wisdom as well, since .differences on the whole are beneficial, sacred and commendable

What is reprehensible is the difference that arises even after distinguishing of rectitude from error and the clarification of truth. These two types of differences have :been indicated by God, the Exalted

The people were one nation; then God sent forth the prophets, good tidings to bear" and warning, and He sent down with them the Book with the truth, that He might decide between the people touching their differences; and only those who had been given it were at variance upon it after the clear signs had come to them, being insolent one to another; then God guided those who believed to the truth, touching which they were at variance, by His leave; and God guides whomsoever He will to a (straight path". (2:213

It is inferred from the first part of the verse that primitive man was simple in his beliefs, with a sound natural disposition (fitrah) and far from deviation and desire .(haws), even though he would differ from others of his kind on certain matters

Differences in matters such as

these were inevitable in his life's course since man had been created for perfection, and these formed part of - the stages of his growth. In order to settle these differences and elucidate the truth during conflict, Allah, the Exalted, revealed the .Book accompanied by the truth, which moved along with it

On the elucidation and clarification of the truth, the people were divided into two groups-some of them believed and followed what the Book had brought, and others did not believe through insolence and hostility. This is the disagreement concerning faith and conviction, and it is a reprehensible disagreement. Regarding the third point the necessity of determining the general rule to resolve disagreements-that is :indicated by the statement of God, the Exalted

Nay, but they cried lies to the truth when it came to them, and so they are in a matter" (perplexing". (۵۰:۵

Almighty censures them for the disorder of their state. They have fallen into confusion by their denial of the truth, and He enjoins them to resort to the truth, avoid creating confusion, and maintain the correct order. Islam has been concerned with removing .these differences through training, educating, discipline, and purification

It has urged adherence to `the strong rope' of Allah and abstention from conflict which would result in social discord. It has brought about brotherhood '- among the believers, and made them "merciful one to another" even though they are "hard .(against the unbelievers" (۴۸:۲۹

(It has described the believers as being "a building well-compacted" (۶۱:۴

in confrontation with untruth, and as “friends one of the other; they bid to honour and forbid dishonour” (٩:٧١).

It has called them to “enter the peace, all of you” (٢:٢٠٨), and not to be separated from the circle of Islam even by an inch, since “one isolated from the community is, for Satan, as the isolated sheep is for the wolf.” It has praised those who ask the forgiveness of Allah, the Exalted, for themselves and their brothers who had preceded them in the faith, and told them to call on God, the Exalted, not to put into their hearts “any rancour towards those who believe” (٥٩:١٠).

Apart from these, there are other lofty qualities necessary for removing differences and for preventing their development in the hearts, or their becoming apparent in their behaviour, since people have been taught that Allah knows what they hide in themselves and what they disclose through their conduct.

In order to preserve the social order and safeguard social unity, disagreements are to be removed by referring them to the judgement of Allah and His Messenger, by appointing Him as arbitrator in their disputes, and by not turning away from Him to another, since His judgement is the sole legal recourse to settle disputes and solve differences, and no one has a choice in what Allah and His Messenger have ruled.

The judiciary is the guarantee for applying a just system of regulations and preventing disarray in social affairs. It requires the establishment of everything

in its proper place, the returning of every right to its owner, and everyone obtaining .his due

That is why the “proposition” is termed “qadiyyah”; because as along as the predicate and its judgement as regards the subject has not been ascertained and the subject's judgement has not been determined in relation to the predicate, either negatively or positively, one is hesitant and uncertain until rightness is distinguished from error and .the sound from the unsound

When the intellect judges a particular matter and gives a specific verdict, then the peace of mind is achieved and doubts end. Thereat the matter with regard to its conceived terms is described as qadiyyah, and the mental form with regard to its .(conceived terms is called judgement (tasdiq

The Criterion for the Judiciary .۲

It has been explained in the previous section that judiciary is necessary for safeguarding social system and to curb unruly behaviour. In this section we will discuss its criterion. It may appear at first that the human intellect can independently discover these rules and that its range covers what the thinking man attains through his judgement without resorting to heavenly scriptures and, in fact, without needing .them at all

However, a deep study of the evidence for the necessity of judiciary shows that the human intellect is insufficient for it and is incapable of determining the criterion for judiciary and defining its scope. This is because the views of one person-as has been .mentioned are not all in agreement with those of other people

Each person

considers his ideas to be right and regards other people's ideas as misconceptions. He imagines that hg views are appropriate and would benefit mankind, while the ideas of others are inadequate and harmful. Thus ensue the intellectual arguments and the .academic debates and discussions

In addition to this, everyone is naturally disposed to put one's interests and those of one's group and family above those of others, regarding them to be better entitled than others. This would have great consequences for the method of laying down and .applying the law

.The following conclusions can be derived from the above discussion

The need to remove disagreements and solve disputes makes the existence of a judiciary necessary. The human intellect is not adequate to provide felicity to human society on its own. On the contrary, it is the light that illuminates the way-the way .indicated by divine revelation-and guides those who follow it to the desired goal

If the human mind-because of its intellectual inadequacy and its being infested by questionable motives-is inadequate in determining the criterion for judiciary, then an inquiry should be made into what the perfect standard for judgement between people :should be. This may be done by looking at two points

Firstly, the inability of human thought and its failure to offer the judicial standard. Secondly, the genius of divine revelation and its competence in determining the judicial system, since it has been derived from the Unseen and transcends the natural .laws, as we will see, God willing

The first point is indicated

:by the statement of God; the Exalted

Messengers bearing good tidings, and warning, so that mankind might have no..."
(argument against God, after the Messengers; God is All-mighty, All-wise". (۴:۱۶۵

This indicates that the intellect on its own is inadequate for attaining perfection and guidance to the most correct path. For were it sufficient, the argument for the adequacy of the intellect and reliance on its guidance would be justified. If people committed sins and per. formed offences, the argument of Allah against them would be established (for the intellect which had been given them had forbidden them from it, so why did they not follow it but go against it?) It would then be right for them to be punished for their sins and evil deeds. However, the noble Qur'an does not support or :sanction punishment before sending Messengers. God, the Exalted, has said

(We never chastise until We send forth a Messenger". (۱۷:۱۵"

Had we destroyed them with a chastisement aforetime, they would have said, `Our" Lord, why didst Thou not send us a Messenger, so that we might have followed Thy (signs before we were humiliated and degraded"' (۲۰:۱۳۴

This proves that it is not God's practice to chastise His creatures before dispatching Messengers, nor to humiliate, disgrace, and destroy through punishment a people before sending prophets to them. Were it not so, these creatures would protest to .God that the punishment was carried out before the proof was completed

The weakness of human thought and the fact that man is not

aware of all beneficial and harmful consequences of his acts, even in matters closest to him, is pointed out in the statement of God, the Exalted, when explaining the :distribution of inheritance and appointing specific shares to each heir

(You know not which out of them is nearer in profit to you". (۴:۱۱"

When explaining the necessity of belief in revelation and the impermissibility of :turning away from it, God, the Exalted, says

So when their Messengers brought them the clear signs, they rejoiced in what" (knowledge they had, and were encompassed by what they mocked at." (۴۰:۸۳

This indicates that man's knowledge does not guarantee him happiness, otherwise it would not be wrong on his part to be content with it. However, it is not so because he .is incapable of attaining through it what he needs

Thus it is reprehensible for man to confine himself to his own knowledge and turn away from what the prophets have brought. In the following statement, God, the Exalted, indicates that man is unable to establish justice and determine the rules of a :just judiciary with the sole means of the intellect that has been given him

Indeed we sent Our Messengers with the clear signs, and We sent down with them" the Book and the Balance so that men might uphold justice. And We sent down iron, wherein is great might, and many uses for men, and so that God might know who ."helps Him, and His Messengers, in the Unseen. Surely God is All-Strong, All-Mighty

(۵۷:۲۵)

This indicates that the aim of sending the Messengers with clear signs and sending the scriptures with them was that the people should uphold justice. If man were able to achieve justice through his intellect and without the need for revelation, there .would have been no need for it

The reason for man's being unable to define the standard for the judiciary is that there lie before him various worlds and higher and lower levels and degrees of existence. He moves from one world to another and from one level to another and he is immortal and imperishable. Since he moves from one abode to another, he must seek perfection through a power that does not cease or perish, and which does not .harm his world or his Hereafter

Obviously, determining such a power requires a comprehensive knowledge of the true nature of man and what makes him ascend to the highest stages or brings him down to the lowest levels. How does that knowledge compare with the little knowledge that has been given man, who does not have much understanding of what ?will benefit or harm him

The second point-the capacity of divine revelation in explaining the judicial system-is .indicated by several Qur'anic verses

Whoso judges not according to what God has sent down-they are the unbelievers".“ ((۵:۴۴

Whoso judges not according to what God has sent down-they are the evildoers".“ ((۵:۴۵

Whosoever judges not according to what God has sent down-they are the ungodly".“ ((۵:۴۷

The difference between unbelief (kufr) and the other

contingent evils, as regards the judiciary, will be explained. Among them is the :statement of God, the Exalted

Is it the judgement of pagandom then that they are seeking? Yet who is fairer in" (judgement than God, for a people having conviction?" (۵:۵۰

These verses suggest that judgement is either the judgement of Allah, determined by revelation, or the judgement of pagandom (jahiliyyah). The latter includes every judgement and law followed by men, whether it is described as civilized or not and .whether it is accepted or rejected by all people or some of them

This is because there is nothing after truth except falsehood, and following that which is not from Allah, the Exalted, necessitates moving away from the straight path which leads to paradise. There are only two paths, whatever they may be called, and no third one: the path of Allah, guiding to the straightway, and the path of the false god (taghut) leading down into the deep abyss of perdition. Furthermore, God, the :Exalted, says

And whatever you are at variance on, the judgement thereof belongs to God. That (then is God, my Lord; in Him I have put my trust, and to Him I turn penitent. (۴۲:۱۰

The verse indicates that the sole recourse for settling differences is judgement of Allah, and no other, whether these differences concern rights, property or some other :matter. God, the Exalted, says

So judge between them according to what God has sent down, and do not follow" their inclinations to forsake the truth that

(has come to thee". (۵:۴۸

This judgement is none other than that which has been revealed by Allah. There are other verses which restrict the criterion for judiciary to divine revelation, indicating that everything besides that is ignorance and error, that anything other than the law (Din) of Allah is not acceptable and that any other path will not lead to the pleasure of Allah and paradise. On the contrary, it will lead to Allah's displeasure and

the abode of ruin-Gehenna, wherein they are roasted; an evil establishment!" (۱۴:۲۸-"
,(۹

for it is not a path which guides to the right goal. That is why the Mighty and Sublime has addressed those who have turned away from the revelation and from the :Messenger, saying

(Where then are you going? It is naught but a Reminder unto all beings". (۸۱:۲۶-۲۷"

The meaning of the term knowledge (`ilm) becomes clear when God the Exalted, urges that we should not say what we do not know and that we should not deny what we do not know. He emphasizes that affirmation and denial must be through knowledge, and confirmation and rejection through understanding. He says of those :who disbelieve without knowledge

No; but they cried lies to that whereof they comprehended not the knowledge, and"
(whose interpretation had not yet come to them". (۱۰:۳۹

Has not the compact of the Book been taken touching them, that they should say"
(concerning God nothing but the truth?" (۷:۱۶۹

This verse urges one to restrict oneself to speaking only through knowledge and affirming

:only through understanding. Similarly, God, the Exalted, also says

And pursue not that thou hast no knowledge of; the hearing, the sight, the heart-all"
(of those shall be questioned of" (۱۷: ۳۶

The knowledge mentioned in these and other similar verses refers to that which relates to happiness and a good life and is in keeping with the revelation of God, the Exalted, to His Messenger. It is immune from the evils of ignorance, forgetfulness; and tyranny, and it is rightly the object of hope and the sole basis for judiciary. As for the intellect, it is independent in matters of doctrine (usul al-Din) and its guidance .makes possible a knowledge of Allah, the Exalted, and faith in Him

Similarly, it facilitates a knowledge of the Messenger and the necessity of his infallibility and freedom from sin and error in delivering the message, and a knowledge of the doctrine of the Hereafter and man's resurrection with his soul and .body for the Judgement

Despite this, however, the intellect is incapable of grasping many matters relating to these important principles, and is also incapable of understanding the benefits and harms latent in actions, laws, and customs. Therefore, it is always in need of the guidance of revelation in circumstances that come upon it and in need of its :instructions on what it cannot attain by itself. God, the Exalted, says

(and to teach you that you knew not". (۲:۱۵۱..."

To conclude, the criterion of the judiciary is the criterion which Allah has sent down through

revelation and laid down for the people in order that they may establish justice and .equity amongst themselves

The Rules of Conduct for the Judge .۳

point

It has been made clear that the judiciary is necessary to protect human society and that its criterion is nothing other than revelation. In this section, we wish to discuss its external realization and how it can exist in the desirable form that will afford the .application of divine justice derived from revelation

The administration of justice in human society is possible through a judge who has knowledge of the divine criterion for judiciary and who believes in it and acts in conformity with it. If knowledge, faith, and action did not exist together, the criterion itself would not have any effect, for it would be like a lamp in the hand of a blind .person who can neither benefit from it himself nor benefit others

He would not be safe from stumbling and the lamp would either break or be .(extinguished. Thus, the practising judge has to be a just scholar (`alim `adil

Man is controlled by three important faculties from which springs felicity or misery. They are: his intellect (`aql), through which he grasps matters; his Desire (shahwah), through which he seeks things and wants them for himself; and his Anger (ghadab), .through which he repels from himself what he dislikes

Knowledge and justice must inform these three faculties, so that the judge may not deviate in judgement or depart from the path of truth. His intellect should be directed towards acquiring

and teaching that which has been brought by the prophets, so that desires (ahwd') do not affect him. There is no room for personal judgement (ray) in' religion, and whoever rules through his personal judgement perishes.

He who abandons the Book of Allah, the Exalted, and the Sunnah of His Prophet, has disbelieved; he who relies on himself when faced with a problem is led astray and he who relies on his judgement in ambiguous matters is as one who has made himself his own leader (imam).

Justice should inform his Desire, and he should not rule out of a liking for a particular matter or a specific person. Nor should he rule out of a desire for wealth, status, or position, or for other reasons springing from vain urges. His Anger should be temperate, and he should not rule out of hatred for a matter or hostility to a person, or out of fear of a threat or intimidation, or for any other reason related to anger, hatred, and the like.

The person who is balanced in his intellect through the teaching of the divine revelation and his faith in it, and is balanced in his. Desire and Anger-since his love and hatred are in the way of Allah, the Exalted-such a person is suitable for judgement between people.

Concerning self-discipline, particularly in relation to judiciary, the Noble Qur'an deals with the regulation of the three above-mentioned faculties.

Firstly, it refers to the moderation (ta'dil, a derivative of ` adl, justice; ta'dil means

informing something with justice) of the intellect through the scriptural instruction and teachings of the prophets, peace be upon them. He who does not judge according to what Allah has revealed, is a disbeliever. This has been mentioned in the previous .section, so we will not repeat it

:Secondly, it refers to the ta`dil of love. God. the Exalted, says

O believers, be you securers of justice, witnesses for God, even though it be against" (yourselves, or your parents and kinsmen …". (۴:۱۳۵

God, the Exalted, has commanded the believer to be a `securer of justice', which is more important than upholding justice. He has commanded that his testimony should be for God, even though it may be against himself, his parents, or his kinsmen, so that his love for himself or his kinsmen does not prevent him from establishing justice or .bearing witness for God

If he was required to make an admission, against himself; he should do so. If the establishment of truth calls for testifying against his nearest relatives, he should not hold back from it. Then his Desire would be just, and his love would be for God, and he .would be attracted towards God

He would not desire anything that God was not pleased with, nor be tempted by something God disliked. He would not desire an unjust thing or incline towards vanity, and it would not be possible to influence or dominate him through his Desire. Thirdly, it refers to the ta`dil of Anger. As God, the

:Exalted, says

O believers, be you securers of justice, witnesses for God. Let not detestation for a“ people move you not to be equitable; be equitable-that is nearer to god fearing. And (fear God; surely God is aware of the things you do”. (۵:۸

In this verse, God, the Exalted, commands the faithful to be `securers of justice' for God and witnesses for justice. Like the previous verse this one is also concerned with justice and equity. God, the Exalted, also warns the believer - lest hatred of a people and enmity to them should lead him to abandon justice and lest hatred should .influence his judgement

The judge must be-guided by the laws of God, the Exalted, so that his anger is only for the sake of God, and his hatred for a people must not cause him an unjust ruling. If the faculty of his `Anger' is regulated in this way, he will have no fear of anyone other than Allah and it will not be possible to influence him through the arousal of his .'`Anger

When man attains this kind of control over the self, and is possessed of knowledge and justice, and his intellectual and behavioural faculties have been moderated, then it is in order for him to apply himself to adjudication and occupy the position held by none other than the prophet or his authorized trustee (wasi) for even if he is neither a prophet nor authorized as a trustee through a special trusteeship (wisayah) as in the

case of the Infallible Imams, peace be upon them-he is a trustee through a general trusteeship in accordance with the texts of appointment (nasb).

It is also proper that this judge should pave judgement through his knowledge, since all dicta are proved through knowledge whereas knowledge is a proof in itself. So if a just judge has knowledge of the truth, then he should judge according to his knowledge, so as to comply with the verses which command ruling with justice.

In fact, if the evidence produced is contrary to his knowledge or the denier takes an oath asserting something contrary to his knowledge, he should refrain from judgement or refer the case, for example, to another judge. It is not permissible for him to rule contrary to his knowledge, even if the evidence or the oath is acceptable.

It is not right that his judgement should be revoked or refuted, since this would be like refuting the Infallible Imam, which in turn would be similar to refuting God, the Exalted. That would actually amount to unbelief and practically to polytheism (shirk), though it may not involve creedal unbelief, because creedal unbelief concerns the outright denial of one of the fundamental doctrines of religion.

One of the most important rules of conduct for the judge is to be on guard against bribery when passing judgement, because that amounts to unlawful gain, unfaithful conduct and transgression and has been forbidden by the noble Qur'an:

"Consume not your goods between you in vanity; neither proffer it

to the judges, that you may sinfully consume a portion of other men's goods, and that (wittingly". (۲:۱۸۸

The Qur'an has forbidden the giving of money to judges in the hope of extracting an unjust judgement from them. The term idla' (proffering) means sending a bucket down into the well to bring out water from its depths. It should be noted that the use of this word here means that bribery is like a bucket sent down into the bosom of the .judge to extract injustice and wrong from his wicked heart

The inward must be pure and the heart unblemished, so that it does not incline towards wealth and is not influenced by coercion. The Qur'an has forbidden these two :qualities in the following verse

(So fear not men, but fear you Me; and sell not My signs for a little price". (۵:۴۴"

The first part of the verse is a prohibition against misplaced fear, as a regulation of the faculty of Anger, and the second is a prohibition against misplaced attraction, as a regulation of the faculty of Desire, along with the suggestion that the whole world is of .little worth

If the unjust judge were to take the whole world for making a wrong judgement, he would have sold the judgement of Allah for a ` little price', since what is transitory is of .little value however much it may appear to be

The bribery that has been forbidden is not only of the pecuniary kind. On the contrary, it also

includes advantages and benefits and may be a particular act performed by the briber, or words of praise, or a display of his respect and reverence for the judge. All these are forbidden, for the term `bribe' is applicable to them and the, rule concerning it applies to them.(۱) In the `Rules of Conduct for Litigants' we will mention that giving and receiving bribe are both unlawful.

It is apparent from what has been previously mentioned that it is necessary for the judge to be on guard against becoming an advocate for the treacherous person, whether it is by misplaced inclination or repulsion. God, the Exalted, says:

"Surely We have sent down to thee the Book with the truth, so that thou mayest judge between the people by that God has shown thee. So be not an advocate for the traitors". (۴:۱۰۵)

The judge has been forbidden to be an advocate for the traitor and defend him, for the traitor only deceives himself, and so is not liked by Allah, the Exalted. The judge must be on his guard against inclining towards him, defending him, driving away the oppressed person, and standing by the oppressor.

Conclusion

The aim of the judiciary is that the judge should possess the greatest impartiality, emanating through wisdom in the intellectual faculty, through generosity and integrity in the faculty of Desire, and through courage in the faculty of Anger, so that the judiciary becomes free from the pollution of injustice, vanity, and falsehood, and achieves unequalled good. One of the

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۱- Al-Tabataba'i, al-`Urwat al-wuthqa, p.۳.

rules of judiciary is that the judge should not hasten with judgement before complete investigation and questioning of the litigants. This is indicated by the statement of :God, the Exalted

Behold, this my brother has ninety-nine ewes, and I have one ewe. Yet he says, "Give" her into my charge"; and he has overcome me in the argument.' Said he, `Assuredly he has wronged thee in asking for thy ewe in addition to his sheep; and indeed many partners do injury one against the other, save those who believe, and do deeds of righteousness-and how few they are!' And David thought that We had only tried him; therefore he sought forgiveness of his Lord, and he fell down, bowing, and he (repented". (۳۸:۲۳-۲۴

This verse indicates that it is essential to abandon haste in identifying the culprit and the offence, even though it is in compliance with the presumption of the soundness of the case. There is nothing in the verse to indicate criticism in relation to the conduct of the Prophet David, since this episode is narrated in the Surat Sad between two com... mendations of Dawud, peace be upon him. Before the above-mentioned verse, God, :the Exalted, says

(And We gave him wisdom and speech decisive". (۳۸: ۲۶"

:After the verses ۲۳-۲۴, God the Exalted says

David, behold, We have appointed thee a viceroy in the earth; therefore judge" (between men justly". (۳۸:۲۶

Undoubtedly, a prophet whom Allah has given `wisdom and speech decisive' and whom He has made a viceroy in the earth, commanding

him to judge between men justly, does not hasten in judgement before decisively completing a proper investigation. Thus it is certain that what issued from Dawud, peace be upon him, was only mentioned as a presumption and a hypothesis, i.e. it is .an injustice to presume the veracity of a hypothetical case

Therefore, the judge must abandon haste in such a decision as well, and must treat both the litigants equally in looking at them and speaking to them. He should know that his tongue is between two flames of fire, and that his tongue is behind his heart; .so if it is right for him he should speak, otherwise he should hold back

If the judge has not learned to conduct himself in accordance with the Divine norms, his judgement would have no significance, even if it were correct; since two matters have to be taker. into account in adjudication; firstly, the actual good (al-husn al-fi'li), which is that the judgement should be in accordance with the truth; secondly, the efficient good (al-husn al-fa`ili), which is that the judgement should issue from a pure .soul and a heart with certain faith, and without fear of anyone's reproach

The judges are of four kinds, three of which belong in the fire and one in heaven.(۱) .This kind is the one who judges rightly and knows that it is right

The Rules of Conduct for the Litigants .۴

It has been demonstrated that the criterion for judiciary is nothing other than Divine revelation, and that the sole authority in settling

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۱- Al-Wasa'il, Chapter ۴, "The Qualities of a Judge."

disputes is someone learned in the revelation, who believes in it and possesses the .attributes that have made him fit for adjudication

It is essential that he should be referred to in a dispute, and turning away from him to refer to someone else is turning from truth to falsehood. It is `far error' as God, the :Exalted, has said

Hast thou not regarded those who assert that they believe in what has been sent" down to thee and what was sent down before thee, desiring to take their disputes to tyrants (taghut), yet they had been commanded to disbelieve in them? But Satan .(desires to lead them astray into far error" (۴:۶۰

It is not for a believer to seek the judgement of one in whom he has been commanded to disbelieve. It is also not for an oppressor (taghut) to appoint himself to judgement. Man will not attain the degree of faith until he makes the Messenger of Allah the judge, choosing him as the arbiter, as Allah, the Exalted, had chosen him, referring to him in his disputes with others, and then not finding any objection or reservation in himself against what the Messenger has ruled, whether it is for or :against him, since a believer is one who submits his affair to Allah, the Exalted

But no, by thy Lord! they will not believe till they make thee the judge regarding the" disagreement between them and then find in themselves no impediment touching thy verdict, but surrender in full

(submission". (۴:۶۵

The noble verse clearly explains the duty of the litigants in a disagreement or dispute, and urges taking recourse to the Messenger and no other person. It also urges complete submission to his judgement when an appeal is made to him--may blessings of Allah on him and his family-for faith is the tranquillity and peace of the soul, and is not achieved except through the submission of both the heart and the .action of bodily members

The Noble Qur'an has described as wrongdoing (zulm) the act of one who does not seek the judgement of God and His Messenger except if he is in the right. Similarly it has described as `success' the act of one who complies and is obedient when called to Allah and his Messenger so that judgement may be made between him and his :adversary. The Almighty says

When they are called to God and His Messenger that he may judge between them," lo, a party of them swerve aside; but if they are in the right, they will come to him submissively. What, is there sickness in their hearts, or are they in doubt, or do they fear that God may be unjust towards them and His Messenger? Nay, but those-they (are the wrongdoers". (۲۴:۴۸-۵۰

This indicates that turning away from the judgement of the Messenger only arises :from wrongdoing. God, the Exalted, also says

All that the believers say, when they are called to God and His Messenger, that he" may judge between them, is that they

(say, `We hear, and we obey'; those-they are the successful". (۲۴:۵۱

This indicates that success requires submission to Allah and His Messenger. It means that the believer pledges allegiance to Allah and His Messenger, and the requirement of allegiance is that he `sell' himself and all the wealth and family he possesses to .Allah and His Messenger

In this way, he neither owns his ownself nor anything attached to him, since he has sold it all to Allah and His Messenger, and it is not for him to act independently concerning himself or what appertains to him, except with the approval of Allah and :His Messenger. Therefore Allah, the Exalted, has said

It is not for any believer, man or woman, when God and His Messenger have decreed" a matter, to have the choice in the affair. Whooever disobeys God and His Messenger (has gone astray into manifest error". (۳۳:۳۶

Just as the believer does not have a choice in seeking the judgement of Allah and His Messenger, since it is incumbent on him, similarly, he does not have a choice in his .affair after their judgement has been passed against him

Not submitting to their judgement is disobedience and straying from the right path. In addition, the Messenger was sent with the Book to judge between the people with the truth, and this judgement was made obligatory on him, may benediction of God be on him and his family. Thus, referring to him and accepting his judgement became .incumbent

If it were

not so, then, on the one hand, judging between the people with the truth would not have been made obligatory on the Messenger, and on the other hand, it would not have been incumbent on the people to seek the judgement of the Messenger and abstain from determining it among themselves.

Note: Firstly, it should be noted that taking recourse to the taghut is disobedience, and taking wealth by virtue of his judgement is unlawful gain, even though what has been taken may be lawful. This is if the disputed wealth consists of a particular property or article. As regards debt, it is doubtful whether the same rule applies to it. Details of this should be sought from books on jurisprudence.

Secondly, adjudication is only for the settlement of disputes, and has no effect in altering facts, whatever they may be. When someone makes a false claim and supports it with a false witness, or denies a truth and takes a false oath, and that is hidden from the judge, the latter will rule according to the false evidence or oath and contrary to the facts. It is incumbent on everyone who has knowledge of it to be on his guard against it, for it is a piece of fire. The details of it are also in legal books.

۵. The Rules of Conduct for the Witness

Judgement has a particular basis on which the judge relies when giving his judgement. If it is strong, then the ruling is correct and in keeping with the facts, not otherwise. Like the judge,

.the witness must be knowledgeable and just

The difference between the two is that the judge must have a knowledge of the Divine law, while the witness must have knowledge of the matter that has been witnessed. He must comply with two points: firstly, he must have been present at the event in order to have witnessed it himself; secondly, he must be present in the court .to report it (۲:۲۸۲) without alteration or evasion

He must not avoid, conceal, or alter testimony, because

the one who conceals it, his heart is sinful; and God has knowledge of the things you“ .(do” (۲:۲۸

:Allah, the Exalted, says

O believers, be you securers of justice, witnesses for God, even though it be against“ yourselves, or your parents and kinsmen, whether the man be rich or poor; God stands closer to you than either of the two. Then follow not desire, so as to swerve; (for if you twist or turn, God is aware of the things you do”. (۴:۱۳۵

The conclusion of this noble verse is that no personal, communal or economic factor should interfere with the testimony, not even the love of oneself or of parents or kinsmen. Similarly, economic factors, such as prosperity or poverty, should not influence the mode of giving witness or abstention from it. That is because Allah, the Exalted, is aware of the actions of His servants and witness to them, whatever they .may be. Whoever knows that protects himself against lapses and humiliation

The verse also shows

that kinship is no hindrance to acceptance of the evidence of one of the relatives, even if it is the child's against the father. The details concerning the verse can be .found in the books on law

The Rules of Conduct for Judgement Between the People of the Book .۶

The two litigants may be Muslims, or Jews or Christians, or of differing religions. If the two litigants are Muslims, the judge will rule between them only in accordance with Islam. If they are Jews or Christians, then the judge has the choice of ruling between them according to Islam, or referring them to special courts of their religious :communities so that they may be judged according to them. Allah, the Exalted, says

If they come to thee, judge thou between them, or turn away from them; if thou" turnest away from them, they will hurt thee nothing; and if thou judgest, judge justly (between them; God loves the just". (۵:۴۲

This noble verse expressly suggests the choice between the two alternatives, and it is not contradicted by the literal meaning (zahir) of another text stipulating judgement between them in accordance with Islam, because, firstly, an express text (nass) enjoys precedence over the literal meaning (zahir) and also because the choice between the two alternatives is also in accordance with Islam. Thus there is no room :for thinking that this verse is abrogated by the following one

So judge between them according to what God has sent down, and do not follow" (their caprices". (۵:۴۸

There is no contradiction between the nass allowing choice and the zahir specifying

judgement in accordance with Islam. In addition, the choice has also been revealed by Allah, the Exalted. As regards the elaboration of the opinion which says that when the two litigants are from different religious communities, it is permissible for a Muslim judge to rule according to their laws, Imam `Ali, peace be upon him, "Were the cushion folded for me, I would judge between the people of the Injil in accordance .with their Injil...". Details on the topic can be found in legal works

Some of our Imami legists(١) have supported the necessity of ruling between the two parties in accordance with Islam, since referring them back to one of the religious .communities would cause fitnah

Our teacher, al-'Imam al-Khumayni, has ruled that if a dhimmi man committed adultery with a dhimmi woman, or if one dhimmi committed sodomy with another, the (Islamic punishment (hadd) should be enforced.(٢

Uncommon Judicial Rulings

It has been stipulated in fiqh that adjudication has certain criteria which the judge .١ may not violate. These include: evidence or oath, the oath given on weak and inconclusive evidence (qasamah in cases of lawth), the knowledge of the judge, or admission, where the judge u not able to give a positive or negative judgement .violating them

He may resort to drawing lots only when there is a conflict of rights, not in order to determine and reveal the ruling but to make a division and in cases which are similarly doubtful. The matter is elaborated in legal works. It ha; been

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.Al-Suyuti, Kanz al-`irfan, II, ٣٧٨ -١

.Tahrir al-Wasi'lah, II, ۴۶۴, ۴٧٠, ۵٠۶, ۵٠٧ -٢

pointed out that drawing lots has a basis in the Noble Qur'an, and to mention it here is :not without benefit. God, the Exalted, has said

For thou wast not with them, when they were casting quills which of them should" (have charge of Mary; thou wart not with them, when they were disputing". (٣:۴۴

(And cast lots, and he was of the rebutted". (٣٧:١۴١..."

The last verse means that Jonah was a loser in the casting of lots when his arrow appeared, and he was thrown into the sea and swallowed by the whale. That has no connection with adjudication because of the general character of the act of drawing .lots. Nevertheless, it has some relation to it and so must be indicated here

-The difference between the rulings of Dawud (A) and Sulayman (A) on tillage .١

(when the sheep of the people strayed there" (٢١:٧٨"

may come to one's mind Sometimes their difference is attributed to ijtihad, and at .other times to the revelation to Sulayman which abrogated the ruling of Dawud

I say: With regard to Divine judgement, there is no scope for a prophet to perform ijtihad according to personal judgement and reflection. In addition, God, the Exalted, :has said

(And We made Sulayman to understand it". (٢١:٧٩"

This suggests that the `understanding' was the result of Divine inspiration. Similarly, that which was given to Dawud, peace be upon him, was from God, the Mighty and Sublime, since God gave him

.(wisdom and speech decisive (fasl al-khitab)." (٣٨:٢٠"

It is said that by fasl

al khitab is meant the rule that evidence lies with the claimant and oath upon the denier. As for the abrogation, it has perhaps not been established because of the possibility of both the judgements being correct though Sulayman's ruling was more .beneficial and proper with regard to the litigants

p: ٣١

About center

In the name of Allah

هَلْيَسْتَوِيالَّذِينَيَعْلَمُونَوَالَّذِينَلَايَعْلَمُونَ

?Are those who know equal to those who do not know

al-Zumar: ۹

:Introduction

Ghaemiyeh Computer Research Institute of Isfahan, from ۲۰۰۷, under the authority of Ayatollah Haj SayyedHasanFaqihImami (God blesses his soul), by sincere and daily efforts of university and seminary elites and sophisticated groups began its activities .in religious, cultural and scientific fields

:Manifesto

Ghaemiyeh Computer Research Institute of Isfahan in order to facilitate and accelerate the accessibility of researchers to the books and tools of research, in the field of Islamic science, and regarding the multiplicity and dispersion of active centers in this field

and numerous and inaccessible sources by a mere scientific intention and far from any kind of social, political, tribal and personal prejudices and currents, based on performing a project in the shape of (management of produced and published works from all Shia centers) tries to provide a rich and free collection of books and research papers for the experts, and helpful contents and discussions for the educated generation and all classes of people interested in reading, with various formats in the .cyberspace

:Our Goals are

(propagating the culture and teachings of Thaqalayn (Quran and Ahlulbayt p.b.u.t-

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replacing useful contents with useless ones in the cellphones, tablets and computers-

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paving the way for the publications and authors to digitize their works-

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relationship with similar centers-

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mentioning the sources-

.It's obvious that all the responsibilities are due to the author

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:Appreciation

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